

N.D.A.G. Letter to Mahoney (Oct. 3, 1991)

October 3, 1991

Honorable John Mahoney
House of Representatives
District 33
PO Box 355
Center, ND 58530

Dear Representative Mahoney:

Thank you for your September 6, 1991, letter in which you ask whether two counties may form a joint economic development association. It is my opinion that two counties may form a joint economic development association.

N.D.C.C. § 54-40-08(1) governing participation in joint functions between political subdivisions, states:

Any municipality, county, park district, school district or other political subdivision of this state, upon approval of its respective governing body, may enter into agreements with one another for joint or cooperative action, on a cost-sharing basis, or otherwise, to carry out any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds of such municipality, county, park district, school district, or other political subdivision pursuant to such agreement, to use unexpended balances of their respective current funds, to enter into lease-option to buy and contract for deed agreements between themselves and with private parties and to accumulate funds from year to year for the provision of services and facilities, and to otherwise share or contribute property in accordance with such agreement in jointly and cooperatively carrying out such function or duty.

N.D.C.C. § 54-40-08(1).

While not addressing the issue directly, the North Dakota Supreme Court has recognized that "Chapter 54-40, NDCC, in effect authorizes one or more governmental units to do jointly what each may do individually." City of Hazelton v. Daugherty, 275 N.W.2d 624, 629 (N.D. 1979). This office has reached a similar conclusion. "Section 54-40-08(1), N.D.C.C., allows political subdivisions to enter into agreements with one another for joint cooperative action to carry out any function or duty which may be authorized by law or assigned to one or more of them. 1983 N.D. Op. Att'y Gen. 11. Therefore, counties may cooperate and jointly perform any duty or function which the counties may be authorized to do individually .

N.D.C.C. § 11-11.1-01 provides: "The board of county commissioners, by resolution, may create a job development authority for the county . . ." N.D.C.C. § 11-11.1-01. This section grants counties the authority to create job development authorities. When read in conjunction with section 54-40-08(1) of the North Dakota Century Code, it becomes apparent that two counties may cooperatively form a job development association.

You also ask whether such a job development association may resemble that association established by chapter 473F of the Minnesota statutes. That particular chapter addresses problems related to economic development in the Twin Cities area, and may be much more involved than would be required for a cooperative effort between two North Dakota counties. Any cooperative job development authority established by two or more North Dakota counties must conform to the requirements of North Dakota law. City of Fargo v. Cass County, 286 N.W. 494, 500 (N.D. 1979). The Twin Cities model which you submitted contains, among other things, property valuation methods and tax computation methods which may not comply with North Dakota law.

Although the Minnesota statute may not be particularly helpful, you may wish to have the county commissioners contact the:

Department of Economic Development & Finance
1833 East Bismarck Expressway
Bismarck, North Dakota 58504.

You may also call them at 701-224-2810. They will assist counties establishing an economic development association. That agency is familiar with present and pending attempts to create economic incentives. I am sure they can help the counties develop a plan which will be acceptable.

Also, regional councils have been established by N.D.C.C. ch. 54-40.1 to assist cities and counties develop an economic development plan. The regional council representative for your area is:

Paul Rechlin
Lewis & Clark Regional Council
400 East Broadway
Bismarck, ND 58501
(701) 255-4591

The Department of Economic Development & Finance and the Lewis & Clark Regional Council may provide a more relevant source of information for your endeavor.

I hope this discussion has been helpful to you.

Sincerely,

Nicholas J. Spaeth
vkk